



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TX 75202-2733

August 27, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7008 0150 0003 0411 6341

Mr. Brad Byczynski
BP Incident Commander
BP Exploration and Production, Inc.
Houma Incident Command Center
Schriever, LA 70395

Re: Request for Information pursuant to Section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6927, regarding the Disposal of Drilling Mud from the "Top Kill" Attempt

Dear Mr. Byczynski:

The United States Environmental Protection Agency, Region 6 (EPA) is investigating BP Exploration and Production, Inc.'s (BP): 1) handling, testing and disposal of certain drilling mud (also known as "water-based mud" or "WMB" and mud components) from the Deepwater Horizon "Top Kill" attempt, tests of which failed the Toxicity Characteristic Leaching Procedure (TCLP) test; 2) handling, testing and disposal of oily water waste from a frac tank that EPA tested on August 13, 2010, which also failed TCLP, and; 3) its compliance with the requirements of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 *et seq.*, and RCRA's implementing regulations.

Enclosed is an Information Request (Request) issued to BP. This Request is being made pursuant to the authority set forth in Section 3007 of RCRA, 42 U.S.C. § 6927. Pursuant to this authority, the EPA may require persons with information relating to the generation, storage, treatment, transportation, disposal, or otherwise handling of hazardous wastes to submit information to EPA. EPA may use information submitted in administrative, civil, or criminal proceedings.

We encourage BP to give this matter its full attention, and we require that BP respond to this Request within five (5) days of your receipt of this letter. EPA is available to meet with BP, in person or telephonically, if BP believes a meeting will improve the speed and completeness of its response, help focus the response, or both. A meeting should not delay the response, and BP should provide preliminary or draft responses to EPA prior to any meeting in order to clarify the discussion.


Failure to respond to this Request may result in EPA seeking penalties of up to \$37,500 per day of violation. Please note that EPA will consider responses that are incomplete, ambiguous, or evasive as a failure to respond to this Request. In addition, furnishing false, fictitious or fraudulent statements or representations to EPA is subject to criminal penalty under 18 U.S.C. § 1001 or Section 3008(d) of RCRA, 42 U.S.C. § 6928(d).

This Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. § 3501, et seq.

Please provide a written response, as specified in the enclosures, to On-Scene Coordinator Nancy Jones, who may be reached at (214) 665-8041 or jones.nancy@epa.gov. If you have any questions or need to request an extension, please contact Ms. Jones. If you have any questions of a legal nature, please contact Ed Quinones, Assistant Regional Counsel, at (214) 665-8035 or quinones.edwin@epa.gov.

Thank you for your attention to this matter.

Sincerely,


John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosures

cc: Honorable Victor Carrillo, Chairman
Texas Railroad Commission
1701 N. Congress
Austin, TX 78701

ENCLOSURE A

INFORMATION REQUEST

I. STATUTORY AUTHORITY

Pursuant to Section 3007 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6927, BP is hereby required to adhere to the directions set forth in Section II-V and provide responses to the questions set forth in Section VI.

II. CERTIFICATION

All information submitted in response to this Information Request (Request) must be certified as true, accurate, and complete by a responsible corporate officer. The term "responsible corporate officer," as used herein, means a president, secretary, treasurer, or vice-president of BP in charge of a principal business function, or any other person who performs similar policy or decision-making functions for BP and has sufficient knowledge and authority to make such representations on behalf of BP. A statement of certification making such representations is provided as Enclosure B and must be filled out and submitted along with BP's responses to this Request.

III. CONFIDENTIAL INFORMATION

The information requested herein must be provided notwithstanding the possibility that the information requested may be characterized as confidential information or trade secrets. Request for confidential treatment must be made when information or access to records is provided and in accordance with the instructions provided in Section V.6. below. Unless a confidentiality claim is asserted at the time requested information is submitted, EPA may make the information available to the public without further notice to you. This information will be protected only if the EPA Administrator determines that the information constitutes methods, processes, or other business information that are entitled to protection as trade secrets.

IV. SUBMISSION OF BP's RESPONSE TO THE INFORMATION REQUESTED

All submissions required by this Request shall be addressed to:

Nancy Jones
U.S. EPA Region 6, 6SF-PE
1445 Ross Ave.
Dallas, TX 75202

Pursuant to 40 C.F.R. Part 2, Subpart B, EPA possesses the authority to disclose to any authorized representative of the United States, information which might otherwise be entitled to confidential treatment. This letter serves as notice, pursuant to 40 C.F.R. Part 2, Subpart B, of this contemplated disclosure.

V. INSTRUCTIONS

1. Due Date. BP is required to submit the information set forth in the questions below to EPA within five (5) calendar days of receipt of this letter.
2. Request for Extension of Time. If BP anticipates that it will be unable to fully respond to this Request within five (5) calendar days, BP must submit a sworn affidavit or declaration by a responsible corporate official within three (3) calendar days of receipt of this letter specifying what information will be provided within the time specified, describing what efforts have been, or are being, made to obtain other responsive information, and providing a detailed schedule of when such other responsive information can be provided. Upon receipt and based on such affidavit or declaration, EPA may exercise its discretion and extend the time in which BP must submit responsive information to EPA.
3. Definitions. All terms used in the questions below will have their ordinary meaning unless such terms are defined in Section VI. below, in RCRA, 42 U.S.C. § 6901 *et seq.*, or 40 C.F.R. § 260.10, in which case such statutory and regulatory definitions shall apply.
4. Information to Include in Response. For each response to each question, or subpart of each question, include the following information: the identity of each person answering each question, or subpart of each question, and the identity of all persons consulted in the preparation of each question, or subpart of each question. For each identity of an individual provided, include the following information: his or her name; present or last known address; present or last known employment position or affiliation and description of job responsibilities; and positions during the time period covered by this Request. For each identity of a business entity provided, include the following information: the name of the business entity; the present or last known address; the state of formation; and the name of the responsible corporate official.
5. Form of Records Produced. For each record produced in response to this Request, indicate on the record, or in some other reasonable manner, the number of the question or subpart of the question to which it responds. Please submit two copies of all information for each question: one hard copy, in a logically sequenced and bound format, and an electronic copy.
6. Confidential Business Information. In accordance with Section 3007 of RCRA, 42 U.S.C. § 6927, the records, reports, and/or information requested in this Request must be submitted, whether or not BP regards part or all of it as a trade secret or confidential. BP may, if it desires, assert a business confidentiality claim for all or part of the information submitted in accordance with 40 C.F.R. Part 2. The information qualifying as business confidential material will be disclosed by EPA only to the extent and by the procedures set forth in 40 C.F.R. Part 2, Subpart B. Unless BP makes a claim at the time that BP submits the information, it may be made available to the public by EPA without further notice to BP.

If BP wishes to assert a claim of business confidentiality, BP must clearly mark each page of each document included in the claim with a legend such as "trade secret", "proprietary", or "company confidential". If BP claims information submitted in response to this Request as confidential, BP must also provide a redacted version of the information with all confidential business information deleted. For any document in which BP asserts a claim of business confidentiality, please answer the questions set forth in a-g, below:

- a. What specific portions of the information are alleged to be entitled to confidential treatment? Specify by page, paragraph, and sentence when identifying the information subject to BP's claim.
- b. For what period of time does BP request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, specify that event. Additionally, explain why the information should be protected for the time period BP has specified.
- c. What measures has BP taken to protect the information claimed as confidential from undesired disclosure? Has BP disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
- d. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that BP would customarily not release to the public?
- e. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
- f. For each category of information claimed as confidential, explain with specificity whether disclosure of the information is likely to result in substantial harm to the competitive position of BP. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could the competitors of BP make use of this information to the detriment of BP?
- g. Is there any other explanation that BP deems relevant to EPA's determination of BP's business confidentiality claim that is not covered in the preceding questions? If so, provide such additional explanation.

BP must furnish comments to the above questions concurrent with BP's response to this Request if BP has claimed any information as business confidential. *See* 40 C.F.R. § 2.204(e)(2). Pursuant to 40 C.F.R. § 2.205(b)(2), BP may request an extension of this deadline. EPA will construe BP's failure to furnish timely comments as a waiver of any confidentiality claim, consistent with 40 C.F.R. § 2.204(e)(1).

7. Submission of New Information. If information or documents not known or not available to BP as of the date of submission of a response to this Request should later become known or available to BP, BP must supplement its response to EPA. Moreover, should BP find, at any time after the submission of BP's response that any portion of the submitted information is false or misrepresents the truth, BP must notify EPA of this fact as soon as possible and provide EPA with a corrected response. There are significant penalties for submitting false information, including the possibility of fine or imprisonment.
8. Additional Information: EPA specifically retains the right to obtain additional information beyond what is listed in this letter.
9. Penalties for Failure to Comply. Failure to fully comply with this Request may subject BP to an enforcement action under Section 3007 of RCRA, 42 U.S.C. § 6927, which permits EPA to seek the imposition of penalties of up to \$37,500 for each day of continued noncompliance. A knowing submittal of false information in response to this Request may subject BP to criminal penalties actionable under 18 U.S.C. § 1001.

VI. Questions

For the purpose of questions 1 through 8 and 11, "drilling mud" means water based drilling mud and mud components used, or meant to be used, for the "Top Kill" attempt at the Deepwater Horizon Mississippi Canyon 252 well.

1. Identify the origin and/or source of the drilling mud, and provide all records identifying such origin/source. Also provide the identity of all persons and/or business entities that provided the drilling mud.
2. Identify all onshore and offshore facilities and/or vessels that transferred, stored, treated, disposed or otherwise handled and/or contained the drilling mud, the dates such facilities managed the drilling mud, the dates the drilling remained in any such storage, and any records, manifests or bills of lading concerning the management of the drilling mud in such onshore and offshore facilities and/or vessels.
3. Provide all monitoring and/or sampling results of drilling mud and all records, e.g., laboratory notes, relating to such monitoring and/or sampling.
4. Identify all laboratories used to sample and/or analyze the drilling mud.

5. Provide all correspondence between BP and the Texas Railroad Commission concerning the handling, transportation, treatment, storage and disposal of the drilling mud.
6. Identify all disposal facilities, e.g., underground injection wells, landfills, or otherwise, where drilling mud was sent, and provide records, e.g., manifests, bills of lading, and sampling and monitoring results, that BP provided to and/or received from each disposal facility. Provide the volume of disposed drilling mud that was sent to each disposal facility identified.
7. Provide records, e.g., manifests, bills of lading, and sampling and monitoring results, concerning drilling mud sent to the Port Arthur, Texas facility operated by Newpark Environmental Services Texas, LLC and/or the Liberty County, Texas facility operated by Trinity Storage Services, LP.
8. Provide records, e.g., monitoring and sampling reports and laboratory notes, of any drilling mud that failed TCLP characterization tests.
9. Describe whether any drilling mud used for the "Top Kill" attempt came into contact with or was mixed with any unused drilling mud, regardless of whether such unused drilling mud was meant to be used for the "Top Kill" attempt. Describe whether any drilling mud used or unused came into contact with or was mixed with any other material, including a hazardous waste. If such contact or mixture occurred, describe how it occurred, when it occurred, the total amount that came into contact with or was mixed with the unused drilling mud or other material, and the final disposition and volume of such used drilling mud that came into contact with or was mixed with unused drilling mud or other material.
10. Describe whether any drilling mud not used in the "Top Kill" attempt which had not come into contact with or was mixed with used drilling mud was either sold, used for a different purpose, or disposed of at a disposal facility. If disposed, identify the disposal facility, and provide the total volume disposed and the name of the disposal facility, and all records related to the disposal, e.g., manifests, bills of lading, receipts and sampling results.
11. Provide records, e.g., reports, documents, notes and correspondence between BP and Lafayette Laboratory and Pace Analytical Services concerning the sampling and testing of drilling mud.
12. Provide all information and records, e.g., reports, documents, and sampling results, about the generation, handling, transfer, storage, treatment, management and disposal (or proposed disposal) of liquid waste (oil and water mixture) from the frac tank EPA sampled in Venice, LA on August 13, 2010.
13. Provide information, explanation(s) and any records, e.g., reports and documents, which might explain why the EPA split-sample of the liquid waste (oil and water mixture) collected from the frac tank in Venice, LA on August 13, 2010, failed TCLP for benzene.

ENCLOSURE B

STATEMENT OF CERTIFICATION

BP Exploration and Production, Inc.

I certify that I am authorized to respond to this Information Request on behalf of BP Exploration and Production, Inc. and, on behalf of BP Exploration and Production, Inc., I certify under penalty of perjury that the foregoing is true and correct. Executed on _____, 2010.

(Signature)

(Name)

(Title)